

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JARMAAL SMITH,
Petitioner,

v.

CRAIG LEWIS,
Respondent.

Case No. [13-cv-03092-WHO](#) (PR)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS;**

**ORDER DENYING REQUEST FOR A
CERTIFICATE OF APPEALABILITY**


This federal action is on appeal. It originated in the district court as a petition for writ of habeas corpus. On review, it became clear that Smith's claim was not the proper subject of a habeas action, but must be brought as a civil rights action under 42 U.S.C. § 1983. The Court dismissed the action without prejudice to Smith refiling the action under § 1983. Smith appealed.

Presently before the Court are Smith's motions to proceed *in forma pauperis* ("IFP") on appeal (Docket No. 9), and for a certificate of appealability (Docket No. 11). His IFP motion is DENIED on grounds that the appeal is frivolous. Petitioner can pursue his claims in this Court, but he must do so by filing a civil rights action, an option clearly stated in the order of dismissal. Regarding the second motion, Smith's request for a certificate of appealability is DENIED. He has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Clerk shall terminate Docket Nos. 9 and 11.

IT IS SO ORDERED.

Dated: April 10, 2014


WILLIAM H. ORRICK
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JARMAAL SMITH,
Plaintiff,

Case Number: CV13-03092 WHO

CERTIFICATE OF SERVICE

v.

GREG LEWIS et al,
Defendant.

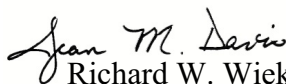
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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 10, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail.

Jarmaal Smith T76804
Pelican Bay State Prison SHU/C-12 #115
P.O. Box 7500
Crescent City, CA 95532

Dated: April 10, 2014


Richard W. Wieking, Clerk
By: Jean Davis, Deputy Clerk